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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/785,508	02/20/2001	Clemens Schmick	31512-168975	5369
26694	7590	11/02/2004	EXAMINER	
VENABLE, BAETJER, HOWARD AND CIVILETTI, LLP P.O. BOX 34385 WASHINGTON, DC 20043-9998			LOPEZ, CARLOS N	
			ART UNIT	PAPER NUMBER

1731

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/785,508

Applicant(s)

SCHMICK ET AL.

Examiner

Carlos Lopez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-5,7,9,10,12,14-21 and 23-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7 and 23-25 is/are allowed.
- 6) ☒ Claim(s) 2-5,9,10,12,14-21 and 26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Response to Amendment

Applicant's amendment filed on 9/26/03 has been entered. After further review, claims rejected under Korber and Dombek are withdrawn. Korber's fails to disclose a wall having material-receiving recess. Dombek's roller having a material-receiving recess fails to provide an elongated wall.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2-5, 9, 10, 12, 14-21, and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "said belt" lacks antecedent basis.

For examination purposes, claim 26 is being read as defining another wall trained over the second pulley.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

- 1) Claims 2-3, 9, 10, 12, 15, 19-21 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Garthaffner et al (US 4,817,638) in view of Crowder

(Electric Drives and Their Controls). Garthaffner discloses a channel for moving smoking material 12. The channel being formed from elongated walls having endless flexible belt 23 and recessed conveyors 21. As shown in figure 1 the recessed conveyor 21 forming the channel moves in a lengthwise direction. The claimed another wall being trained over a second pulley is deemed as Gartaffner's belt 23 trained over rollers 24-26, which as shown in figures 1-3 have a toothless peripheral surface. Garthaffner is silent disclosing the type of drive for moving the recessed conveyor 21 or the endless flexible belt 23. However, in pages 188-189, Crowder teaches "In drive systems, there have been an almost complete shift towards the use of digital rather than analog systems; this results in systems with a number of significant benefits." Among the benefits of using a digital drive is " the use of low-cost microprocessors", "digital control provides a highly flexible system", and "due to digital nature of the controller there will be no component variation". It would have been obvious to one of ordinary skill in the art at the time the invention was made to have chosen a digital (digital servo) as the means for moving the walls forming the channel of Garthaffner because it provides a low cost, a highly flexible system, and there is no component variation as taught by Crowder.

As for claim 2, the particulate material 12 are cigarettes.

As for claim 20, conveyor 13 provides smoking material to the channel formed from belt 23 and recessed conveyor 22 (Figure 1).

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As for claim 12, the recessed conveyor 21 is coated with a current conducting material (Column 3, lines 29ff).

As for claim 19, the recess of conveyor 21 are equidistant from each other (Figure 1).

As for claim 21, as shown in figure 1 the width orientation is narrower than the length orientation.

As for claim 15, figure 1 shows a stream of cigarettes, which is convertible into rod-like fillers of smoker's product, each have a predetermined length and the material receiving recess (22) are spaced apart from each other lengthwise of said at least one wall. It is considered that the recesses are spaced apart from each other by a multiple of the length of the cigarette. Any multiple of the length of the cigarette may be used to space apart the recess without affecting the transporting of the cigarettes.

4) Claims 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Garthaffner et al (US 4,817,638) in view of Crowder (Electric Drives and Their Controls) in further view of Luke et al (US 3,915,075). As noted above Garthaffner transports a stream of cigarettes 12 between a belt 23 and conveyor 21. Garthaffner is silent disclosing the material forming the endless belt. However, Luke teaches that belts having polyurethane or polyethylene materials provide gripping of the cigarette rod

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without damaging it (Col. 2 lines 31ff). At the time the invention was made it would have been obvious to a person of ordinary skill in the art to provide Garthaffner's belt with polyurethane or polyethylene materials as taught by Luke in order to provide gripping of the cigarette rod without damaging.

Allowable Subject Matter

Claims 4-5 and 16-18 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 9/26/03 have been fully considered but they are not persuasive. Applicant argues that the cited references do not teach the combination of claims 22 and 7, in particular that it does not teach a toothless belt. The instant claims currently being rejected do not recite a toothless belt.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Reference A has been cited to show the state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lopez whose telephone number is 571.272.1193. The examiner can normally be reached on Mon.-Fri. 8am - 5pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 571.272.1189. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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STEVEN P. GRIFFIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700